IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3583 of 2003

with

SPECIAL CIVIL APPLICATION No 10565 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIMABEN KRISHNARAO SALUNKE

Versus

ROTARY EYE INSTITUTE

Appearance:

1. Special Civil Application No. 3583 of 2003
MR SHASHIKANT S GADE for Petitioner No. 1
..... for Respondent No. 1-2

2. Special Civil Application No. 10565 of 2003
MR SHAILESH C PARIKH for Petitioner No. 1
MR SHASHIKANT S GADE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/12/2003

COMMON ORAL JUDGEMENT

In both these matters rule was issued on 15.12.2003. Respective advocates in each of these matters waived service of rule. Notice as to interim relief was made returnable on 24.12.2003 and ad interim relief in terms of para 21(a) was granted in Special Civil Application No.10565 of 2003. At the joint request of the learned advocates both the matters are taken up for final disposal today.

2. Special Civil Application No.3583 of 2003 is filed by the respondent worker and Special Civil Application No.10565 of 2003 is filed by KDN Gohil Hospital. Special Civil Application No.3583 of 2003 is filed being aggrieved of not granting 100% back wages by the learned Judge of the Labour Court, Navsari by his judgement and award dated 17.7.2002 in Reference (LCN) No.265 of 1989. While being aggrieved of grant of reinstatement on the original post with continuity of service with 50% back wages, KDN Gohil Hospital has filed Special Civil Application No.10565 of 2003.

3. The facts leading to the present proceedings are as under.

The workwoman was appointed as a Statistician by Rotary Eye Institute by an appointment order dated 29.6.1987, produced at Annexure 'C' to Special Civil Application No.10565 of 2003. This appointment order is issued pursuant to an application dated 8.6.1997 addressed to the Chairman of the Rotary Eye Institute. It will not be out of reference to mention herein that the father of the present respondent workwoman was serving as Manager in the said institute, therefore, it will not be wrong to infer that an application was obtained from the daughter, Seema K. Salunke and an appointment as a Statistician was given by the order referred to above. It is required to be noted that the appointment was given as a project was sanctioned and granted by the Government to this Eye Institute, which is referred to in the order dated 18.8.1988. It reads as under:

"Community Opthalmology Project of Government of India under USAID undertaken by this institution and sanctioned under Government of India, Ministry of Health and Family Welfare, New

Delhi's letter No.W.11015/ 2/ 83 VOP dated 22.4.1985 expires in September 1988. .. .."

4. It is the case of the petitioner establishment that the project was to expire in the month of September 1988, but before that there being a report of the Monitoring Team, wherein it was observed that, 'the Statistician appointed in the project is only a B.Com. and probably is more conversant with the accounting procedures than statistics'. Therefore, the services of the respondent were brought to an end.

5. Mr.Parikh, learned advocate appearing for the petitioner establishment invited attention to the deposition of the respondent, exhibit 47 and also the deposition of the father of the respondent, exh.68 and various other documents which are produced on record in Special Civil Application No.10565 of 2003 including that of appointment order dated 29.6.1987, Annexure 'C'; the report of the Monitoring Team, Annexure 'D'; termination order dated 18.8.1988, Annexure 'E'; letter dated 27.9.1988, Annexure 'F4'; letter dated 30.2.1989, Annexure 'F3'; statement showing the payment made to the respondent since June 1987 to September 1988.

6. From a perusal of the aforesaid documents it is clear that the respondent was appointed as the project was assigned to the establishment by Govt. of India under USAID and that the respondent was not possessing the requisite qualification so as to entitle her to be appointed as a Statistician and therefore, when the Monitoring Team took note of that, the services of the respondent were terminated. Mr.Gade, learned advocate appearing for the respondent worker (petitioner in SCA No.3583 of 2003) submitted that the services of the respondent were terminated only when the respondent demanded receipts of the donation, which was compulsorily deducted/ obtained from the respondent without giving receipt for the same. But then the said case of the respondent is negatived by the deposition of the father of the respondent herself, who has stated that he was serving as Manager for 8-9 years with the establishment and that he has never deducted any amount as donation from any of the employee's salary. Mr.Gade, learned advocate submitted that the learned Judge has rightly not believed that the project is closed. Mr.Gade, learned advocate also submitted that it was deposed by the respondent that in place of the respondent another person was appointed which proves that the duties which were discharged by the respondent were of perennial nature and the establishment could not have terminated the services

of the respondent. The said contention is also found to be without any substance inasmuch as the establishment has shown vide letter dated 27.9.1988 that instead of appointing a person as Statistician who was to be paid Rs.1500/-, and a Store Keeper who was to be paid Rs.600/-, a person was asked to work as Statistician and also a Store Keeper and by that way the Institute has saved expenses of the salary of the Store Keeper. It is also clear from the deposition of the respondent worker that the establishment with which she was working was a charitable institution run from the donations received. It is also admitted by the worker in her cross examination that her appointment was made only in connection with the Govt. Project. It is also admitted by the respondent worker in her cross examination that the persons who were appointed along with the respondent worker on the project, none of them are working in the petitioner establishment. From all this it is clear that the appointment of the respondent was only a temporary one for the purpose of project assigned by the Government of India to the petitioner establishment, on completion of the same, the services of all the persons who were engaged for the same, were terminated. The Court cannot lose sight of the fact that the petitioner establishment is a charitable institution and charitable institution if discharges this type of social duties the same cannot be saddled with the liability of persons employed on permanent basis.

7. In view of the fact that the petitioner establishment is run on donations received, it is an additional reason for which the judgement and award of the learned Judge of the Labour Court, Navsari dated 13.7.2002 should not be allowed to stand. In view of the aforesaid discussion the judgement and award of the learned Judge is hereby quashed and set aside. Special Civil Application No.10565 of 2003 is allowed. Rule is made absolute. Consequently, Special Civil Application No.3583 of 2003 fails, the same is dismissed. Rule is discharged. No order as to costs in both the petitions.

(Ravi R. Tripathi, J.)

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